

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MARYLAND  
3                   SOUTHERN DIVISION

5 UNITED STATES OF AMERICA, ) CRIMINAL  
6 Plaintiff, ) NO. DKC-14-0318  
7 v. )  
8 KATHERINE NOELLE NASH, )  
9 Defendant. )

13 FOR THE PLAINTIFF:

14                   OFFICE OF THE UNITED STATES ATTORNEY  
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**18 FOR THE DEFENDANT:**

19                   OFFICE OF THE FEDERAL PUBLIC DEFENDER  
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23 OFFICIAL COURT REPORTER:  
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25 \* \* \* COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES \* \* \*

1                   THE COURT: Good afternoon.

2                   (Counsel reply, "Good afternoon, Your Honor.")

3                   THE COURT: Please be seated.

4                   Ms. Hayes.

5                   MS. HAYES: Good afternoon, Your Honor. *United*  
6 *States of America vs. Katherine Noelle Nash*, Criminal No.  
7 DKC-14-318. The case is called for a sentencing.

8                   I am Kelly Hayes on behalf of the United States. I am  
9 joined by my colleague, Kristi O'Malley.

10                  MS. FITZGIBBONS: Good afternoon, Your Honor. Amy  
11 Fitzgibbons and John Chamble on behalf of Ms. Nash, who is  
12 present.

13                  THE COURT: Okay. Very good. All right. Let me  
14 review the papers that I have. The presentence report came to  
15 me on or about December 30th of 2014. After that, on January  
16 5th, I received the government's first letter. On January 8th,  
17 I received a letter dated the 7th from the defense with some  
18 attachments, along with a motion to seal. And then I have  
19 received today an additional letter from the government, and we  
20 also have a motion for order of forfeiture.

21                  Is that everything that I should have received in  
22 writing?

23                  MS. FITZGIBBONS: Yes, Your Honor.

24                  MS. HAYES: That's correct, Your Honor.

25                  THE COURT: Okay. I don't know who to address here,

1 but, Counsel, have you had an opportunity to review that  
2 presentence report with Ms. Nash?

3 MS. FITZGIBBONS: We have, Your Honor, the initial.

4 THE COURT: And are there any issues with regard to  
5 the contents of the report?

6 MS. FITZGIBBONS: No, Your Honor.

7 THE COURT: Are the guidelines as had been  
8 contemplated by the parties? I think they are, although the  
9 report calculates separately -- no. I think it says you had  
10 anticipated. Is that right?

11 MS. FITZGIBBONS: Yes.

12 MS. HAYES: I believe so, Your Honor.

13 THE COURT: Okay. Then we have a 38 and a one.

14 All right. Some of this material has come in quite  
15 recently despite the fact that any psychological report was due  
16 to be presented to the government at least 30 days before  
17 sentencing.

18 The parties' agreed-upon disposition is quite -- either a  
19 departure or a variance. I am not quite sure what the parties  
20 believe it should be calculated as and I have had a very  
21 limited amount of time to review the material. So I am happy  
22 to hear from you today, but I am not agreeing that I can  
23 necessarily decide today what to do either about the parties'  
24 plea agreement or ultimately the sentencing issues that remain.

25 So, is anyone to speak today? Do we have any witnesses?

1 MS. HAYES: Your Honor, I believe we may have, but if  
2 I may just have a moment to confer?

3 THE COURT: Mm-hmm.

4 MS. HAYES: Thank you.

5 Your Honor, we had anticipated that the victim's  
6 grandmother and the victim's father were going to be here to  
7 testify. Unfortunately, due to transportation issues, they  
8 have not been able to make it today.

9 THE COURT: Okay. Anyone from the defense side?

10 MS. FITZGIBBONS: No, Your Honor.

11 THE COURT: All right. The way I see it, there  
12 really are two issues. One, the parties need to advise me as  
13 to why the agreed-upon disposition under Rule 11(c)(1)(C) that  
14 relates only to the length of incarceration should be accepted  
15 by the Court. If I decide to do so, then we have the issue of  
16 supervised release, both the duration and the conditions for  
17 that.

18 The probation office has recommended something that I  
19 gather the defense takes issue with, and I guess -- was this an  
20 expedited report so you didn't know? It wasn't. You saw the  
21 proposal or do they not include the recommended --

22 MS. FITZGIBBONS: We don't get the conditions until  
23 the final report, so we received the conditions when -- on the  
24 29th when the final report is prepared.

25 THE COURT: Okay.

1 MS. FITZGIBBONS: Although the conditions are the  
2 standard conditions.

3 THE COURT: Right.

4 And you knew the government was going to be seeking a  
5 lifetime term of supervised release at least at the time of the  
6 plea?

7 MS. FITZGIBBONS: I think that's fair, Your Honor.

8 THE COURT: So, anyway, that's coming in pretty late.

9 So, again, I don't know how far we can get because I need  
10 to have confidence in whatever decision I ultimately reach.

11 Who wants to go first on why I should accept the proposed  
12 disposition?

13 MS. HAYES: Your Honor, the government is happy to go  
14 first. Before I start, I do want to emphasize that there is a  
15 state court proceeding in which Ms. Nash is set to plead guilty  
16 and be sentenced to a sexual assault charge, and that's set for  
17 Friday of this week.

18 THE COURT: I thought it was the 27th?

19 MS. HAYES: I -- let me double check that. One  
20 moment, please.

21 MS. FITZGIBBONS: It is -- I don't know if it was  
22 previously the 27th, but I did speak with her state attorney  
23 and it is this Friday, Your Honor.

24 MS. HAYES: Your Honor, that is my -- I have --  
25 according to the plea memorandum that was attached to the -- I

1 am confused myself, Your Honor. According to the plea  
2 memorandum that I attached to my sentencing memorandum, it says  
3 that there is a matter scheduled for January 16th at 2:15 at  
4 1:30 p.m. (sic). It might have been for purposes of a writ  
5 because I do understand from my other communications with the  
6 ASA in state court that they were hoping to schedule it when  
7 the trial was originally scheduled, which I believe is January  
8 27th. So perhaps defense counsel will have more information on  
9 that.

10 MS. FITZGIBBONS: It is on Friday, Your Honor. When  
11 I filed the sentencing memo, I just wanted to confirm and to  
12 make sure that you had any information that you might need from  
13 the state side, but it is this Friday, although I got the  
14 sense, from talking to Ms. Nash's state public defender, that  
15 the Court there is really waiting anxiously to see what the  
16 Court does, and I don't imagine -- I know the government has  
17 issues with the writ -- that there would be a lot of resistance  
18 to moving the state sentencing if the Court felt like it needed  
19 more time, and that's what I would ask.

20 THE COURT: Would you check with the marshal and find  
21 out if they have a writ?

22 MS. HAYES: I do believe a writ was requested. I  
23 have had conversations with my assistant regarding it, but we  
24 might as well check with the marshals.

25 THE COURT: Well, why would you be issuing the writ?

1 MS. HAYES: No, Your Honor. We were coordinating  
2 with the state. The state would have issued the writ, Your  
3 Honor.

4 THE COURT: All right. Go ahead.

5 MS. HAYES: So I will move forward.

6 Your Honor, the government does, recognizing that it is a  
7 significant variance or departure from the guidelines  
8 calculation, the government does, after a very careful  
9 consideration, believe that eight years of imprisonment,  
10 followed by a lifetime term of supervised release, is the  
11 appropriate resolution of this matter.

12 The government recognizes that this is a very unusual and  
13 unique set of circumstances when calculating all of the 3553 --  
14 or considering all of the 3553 factors.

15 Starting first with the nature and circumstances of the  
16 offense, the government does not dispute that the conduct set  
17 forth in the plea agreement is absolutely egregious. Clearly,  
18 Ms. Nash -- and before I move on, I wonder if it makes sense,  
19 Your Honor, to have some of the -- this argument set under  
20 seal? I don't know who is present in the courtroom, but it may  
21 be a consideration before I go into too many details.

22 THE COURT: Okay.

23 MR. CHAMBLE: Your Honor, in the courtroom is my  
24 client's aunt, but we would ask that, for the representations  
25 that are about to be made, that we seal the courtroom.

1                   THE COURT: And excuse her?

2                   MR. CHAMBLE: For the limited period that is going to  
3 discuss sensitive matters.

4                   THE COURT: All right. The parties have requested  
5 that I exclude anyone not immediately involved in the court  
6 proceedings during the next phase of this sentencing. I find  
7 that there are compelling reasons to do so and ask that you  
8 remain outside. We will, just as quickly as possible, alert  
9 you, and you can return once this phase is completed. Just a  
10 second, please.

11                  (It is the policy of this court that every guilty plea  
12 and sentencing proceeding include a bench conference concerning  
13 whether the defendant is or is not cooperating.)THE COURT:  
14 Here she comes. All right. Go ahead.

15                  THE DEFENDANT: Your Honor, first off, I am so deeply  
16 sorry for the things that I have done that have caused me to  
17 become incarcerated. In high school, I was the chief of our  
18 school newspaper. I was active in sports. I never got in  
19 trouble, never had detention, never was suspended. I was a B  
20 student.

21                  I had big dreams, wanted to go on to college, but I also  
22 had a really difficult childhood growing up. And instead of  
23 getting -- seeking proper treatment like I should have, I just  
24 suppressed everything, and, like a volcano, I just exploded  
25 into terrible decisions.

1       I am not going to sit here and try to make excuses for my  
2 actions, and I understand that actions do have consequences. I  
3 take full responsibility for everything that I have done.

4       But I would like to have a second chance. I really know  
5 that -- I know that I need treatment, and, right now, that's  
6 the most important to me. And when I say "treatment," I mean  
7 getting to the root of my issues.

8       I know I have some demons that I need to confront. I'd  
9 like to go on to become a public speaker, an activist for  
10 adults who have been abused as children to kind of stop the  
11 cycle.

12       Unfortunately, I guess I kind of repeated the cycle, and  
13 the fact that I hurt my own child is something that I will  
14 probably never get over. I don't ever want to go back to being  
15 that person ever again, and if it means having to go through  
16 therapy for the rest of my life, I am okay with doing that. I  
17 just really want to get better. I am not a bad person. I just  
18 made some really bad decisions. And I feel like I can be a  
19 productive member of society going forward.

20       I want to try to channel all of this time and try to do  
21 something positive with it. I promise you you will never see  
22 my face again in this courtroom. I just really want a second  
23 chance to try to be a better person.

24           THE COURT: Thank you.

25           Ms. Nash is before the Court for sentencing on Count

1 Three and Four of the indictment: transportation of child  
2 pornography and possession of child pornography.

3 The guideline calculation encompasses conduct that was  
4 acknowledged in the Statement of Facts and encompassed in a  
5 count that she did not plead to, which is kind of ironic here,  
6 I suppose. The conduct will be the subject, I understand, of  
7 the state court proceedings.

8 The parties have presented the Court with a partially  
9 agreed-upon resolution or disposition; that is, the parties  
10 have jointly proposed that despite guidelines that approach the  
11 statutory maximum, that the Court impose an imprisonment  
12 sentence of eight years, or 96 months.

13 The parties have not agreed upon a length of supervised  
14 release, although they appear to be at least approaching  
15 agreement on the description of the special conditions that  
16 should be imposed.

17 Although the plea contemplated potentially a  
18 departure-type request, the parties have actually presented  
19 this to me in the context of a variance, so I will not address  
20 the guideline departure requirements directly.

21 This is, I believe, I don't want to say "unique" without  
22 searching my recollection more thoroughly, but close to a  
23 unique case from my perspective.

24 The cases such as this, charges such as this almost  
25 always have an aspect of psychological difficulty. That almost

1 goes without saying, in my view, in terms of the nature of the  
2 conduct. What's different here is an agreement among all  
3 parties, Probation included, I believe, based upon their  
4 recommendation, that there is a recognition that the background  
5 and experience of Ms. Nash means that she deserves a much lower  
6 sentence than the guidelines might otherwise suggest.

7       And I am, too, taken with the conclusion of the  
8 psychological report that I was provided, as well as by the  
9 presentation of counsel and Ms. Nash's very articulate  
10 allocution today.

11       Accordingly, I will agree to be bound by the proposed  
12 sentence of eight years incarceration as set forth in the plea.  
13 And I will acknowledge, I didn't necessarily think I was going  
14 to when I came in today, this might have been the first "(c)"  
15 plea that I at least took longer to think about than the one  
16 sentencing hearing, but I am now persuaded that there is reason  
17 to believe that the psychological trauma experienced by  
18 Ms. Nash can be addressed by her, because it will take help,  
19 but she is the one who needs to address it in such a way that  
20 we can conclude that it is not necessary for the protection of  
21 the public in any way to keep her incarcerated for as long as  
22 the guidelines might otherwise suggest and that such a longer  
23 sentence is not necessary for the other goals of sentencing  
24 either, that is, punishment, promoting respect for law, nor, in  
25 this context, is deterring others, unfortunately, possible;

1 that is, people who experience the psychological trauma and  
2 results that Ms. Nash has are unlikely to be deterred by the  
3 difference between an eight-year and a 20-year sentence, if at  
4 all.

5 So I will agree and have agreed now to be bound, and I do  
6 impose, accordingly, concurrent sentences of 96 months on  
7 Counts Three and Four.

8 On the other hand, I do not agree with the defense that I  
9 can, today, put a limit on the length of supervised release in  
10 terms of years. I would, at a minimum, conclude that 25 years  
11 from today would be the minimum that the law -- or that I  
12 really should impose given the guidelines and the five-year  
13 mandatory, but I -- I am not going to limit it.

14 I am going to place you on supervised release for life  
15 and ask that the probation office, because I am not sure that  
16 any of us here are necessarily going to be the ones making  
17 decisions, flag this as a case where at least the sentencing  
18 judge would expect that something short of that might be  
19 possible and that, at the very least, the level of supervision  
20 can be stepped back as time goes on with no violations.

21 And Ms. Nash needs to know, as well, that whether these  
22 particular attorneys are still available when the time comes,  
23 that Courts can entertain requests to terminate supervised  
24 release early. And that's because, I don't know, that's what I  
25 was concerned about from the beginning is do we now have

1 reliable, or, not reliable, but confidence that we do have the  
2 tools to address your problems in a way that can give us  
3 confidence that we'll succeed, and I don't know that anybody  
4 has that answer or could. And that's primarily why I am going  
5 to place you on supervised release for life. That will be on  
6 the normal and ordinary conditions of supervision.

7 And in addition, I will direct that you participate in a  
8 mental health treatment program approved by the probation  
9 officer, which will include evaluation, counseling, and  
10 testing.

11 They have asked and I will require that you provide them  
12 with access to requested financial information. I see valiant  
13 attempts at employment, but perhaps, shall we say, limited  
14 success in developing career aspirations. And finances, while  
15 they didn't necessarily contribute to the offenses here, will  
16 be a continuing issue, so I am going to ask that you provide  
17 them with the financial information so that they can help you  
18 with that aspect of the future.

19 You are not to use computer systems, Internet capable  
20 devices, or similar electronic devices without the prior  
21 approval of the probation officer. I am going to direct that  
22 they presumptively grant permission for employment or  
23 educational purposes, as we have talked about today, but you  
24 will cooperate with monitoring of the -- any computer use.  
25 And, today, that would include participating in a computer and

1 Internet monitoring program, identifying computer systems,  
2 Internet capable devices, and/or similar electronic devices  
3 that you have access to, and allowing the installation of  
4 monitoring software or hardware at your expense and permitting  
5 random, unannounced examinations of computer systems, Internet  
6 capable devices, and similar electronic devices under your  
7 control.

8 And that's what we were talking about that the monitoring  
9 is less available for other people's computers.

10 MR. CHAMBLE: Your Honor --

11 THE COURT: Mm-hmm.

12 MR. CHAMBLE: -- just on the computer monitoring at  
13 the defendant's expense, in light of the fact that she's had a  
14 --

15 THE COURT: Yeah.

16 MR. CHAMBLE: -- a sporadic employment history --

17 THE COURT: Probation will have the discretion and  
18 they often excuse that financial obligation. Okay?

19 MR. CHAMBLE: Thank you.

20 THE COURT: Yeah. Yeah. We will see where we are.  
21 If I don't put it in, they can't consider it.

22 You will comply with the requirements of the Sex Offender  
23 Registration and Notification Act. The probation officer will  
24 direct and the law requires that you register with the state  
25 sex offender registration agency where you live, work, go to

1 school, or where you are convicted, so that means the Maryland  
2 law will apply, and Ms. Fitzgibbons tells me that her  
3 understanding is that will be for the rest of your life, and it  
4 is also a condition of supervised release. Don't run afoul of  
5 that requirement. That's not a reason you want to come back to  
6 see someone like me.

7 You will participate in a sex offender treatment program  
8 as directed by the probation officer. You will follow the  
9 rules and regulations of that treatment program. I believe  
10 that is an important aspect of your future treatment, and if  
11 things go well, they will back that off if they don't see the  
12 need.

13 You will not have any contact with any victim or witness  
14 in this case by any means, including in person, by mail, by  
15 telephone, or via any device capable of connecting to the  
16 Internet or through any third parties unless approved by the  
17 probation officer. If any contact, intentional or otherwise,  
18 occurs, you will immediately leave, if it's in person, and  
19 report the contact to the probation officer within 24 hours.

20 You will have no contact with persons under the age of 18  
21 unless approved by the probation officer. You will not  
22 congregate or loiter near anyplace frequented primarily by  
23 children under the age of 18, such as schools, school parks,  
24 school playgrounds, amusement parks -- I think that encompasses  
25 what we are looking for -- unless approved by the probation

1 officer. Again, any unauthorized contact with persons under  
2 the age of 18, whether intentional or not, will be reported to  
3 the probation officer within 24 hours.

4 Now, this provision does not encompass persons under the  
5 age of 18 with whom you must deal in order to obtain ordinary  
6 and usual commercial services. This is only, you know, the  
7 playground type issue here.

8 And, finally, you will not have access to any adult or  
9 child pornography while you are on release.

10 There will be no fine, but I do impose the special  
11 assessment of \$100 per count, a total of \$200. This is money  
12 that goes into a fund to help people who are victims of crime  
13 and, for that reason, have financial problems that they didn't  
14 otherwise have.

15 And, in addition, I will sign the order of forfeiture  
16 concerning the Toshiba Satellite laptop -- two computers, two  
17 different serial numbers. That's it, right? Just the two  
18 computers?

19 MS. HAYES: That's correct, Your Honor.

20 THE COURT: What have I forgotten?

21 MS. FITZGIBBONS: Your Honor, could you recommend  
22 that she be designated to FMC Carswell?

23 THE COURT: Oh, absolutely. I am trying to make sure  
24 I touched everything I needed to on the supervised release  
25 conditions.

1           So I will prepare and enter, then, this judgment in  
2 writing and copies will go out electronically.

3           And other than the Carswell recommendation, any other  
4 recommendations for the Bureau of Prisons?

5           MS. FITZGIBBONS: I think, in the alternative, we  
6 have some concerns about her security designations, so we would  
7 say FCI Aliceville.

8           THE COURT: Aliceville. That's the new one, isn't  
9 it?

10          MS. FITZGIBBONS: Yes, Your Honor.

11          THE COURT: Okay.

12          THE DEPUTY CLERK: Dismissal of counts.

13          THE COURT: Counts One and Two?

14          MS. HAYES: That's correct, Your Honor. The  
15 government moves to dismiss Counts One and Two of the  
16 indictment.

17          THE COURT: Finally, Ms. Nash, you gave up, I think,  
18 almost all of your rights to appeal, but let me advise you that  
19 an appeal would have to be noted in writing within two weeks of  
20 today, so talk that over promptly with your attorneys because  
21 they would help you by filing a notice of appeal if that's what  
22 you decide to do.

23          And, finally, I will note in the judgment that you will  
24 not, at least we don't expect that you will be getting credit  
25 back to March 11th, 2014, the state sentence, whenever that is

1 imposed, so that you should receive credit on this sentence  
2 back there.

3 I, obviously, appreciate the diligence with which counsel  
4 and the probation office have addressed the concerns that have  
5 brought us together.

6 Ms. Nash, it's a tough several years that you are going  
7 to experience. I understand, even in terms of the detention,  
8 that it has been very difficult given the reaction of the  
9 people you are with. You, so far, have demonstrated the desire  
10 and ability to remain as positive as the circumstances permit.  
11 Don't minimize, though, the difficulty of what you do face, but  
12 if your resolve continues, then I think you will show all of us  
13 that this was a very good decision and a reasonable method of  
14 going forward.

15 THE DEFENDANT: Thank you.

16 THE COURT: You have begun to recognize, you know,  
17 what your misfortune has already inflicted on people you love,  
18 and just keep that central, that you don't want, in any way,  
19 shape, or form to contribute to that in the future.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Is there anything further  
22 that we need to do?

23 MS. HAYES: No, Your Honor. Thank you.

24 MS. FITZGIBBONS: No.

25 THE COURT: All right. If not, that completes this

1 proceeding. Thank you.

2 (The proceedings were concluded at 3:31 p.m.)

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1                   C E R T I F I C A T E

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3                   I, Renee A. Ewing, an Official Court Reporter for  
4 the United States District Court for the District of Maryland,  
5 do hereby certify that the foregoing is a true and correct  
6 transcript of the stenographically reported proceedings taken  
7 on the date and time previously stated in the above matter;  
8 that the testimony of witnesses and statements of the parties  
9 were correctly recorded in machine shorthand by me and  
10 thereafter transcribed under my supervision with computer-aided  
11 transcription to the best of my ability; and that I am neither  
12 of counsel nor kin to any party in said action, nor interested  
13 in the outcome thereof.

14

15

Renee A Ewing

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Renee A. Ewing, RPR, RMR, CRR  
Official Court Reporter  
August 14, 2020

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